

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERKS OFFICE
U.S.D.C. - Atlanta
MAY 04 2011
By: JAMES N. HATTEN, Clerk
Deputy Clerk

TPI HOLDINGS, INC., and
DOMINION ENTERPRISES,

Plaintiffs,

v.

RUDY SCHELLENBERGER,

Defendant.

Civil Action No.: 1:10-cv-04091-TCB

FINAL ORDER AND JUDGMENT

This matter is before the Court on Plaintiffs' Motion for Default Judgment. Having reviewed the Plaintiffs' motion and supporting memorandum and the entire record herein, pursuant to Federal Rule of Civil Procedure 55(b), the Court hereby finds as follows:

1. Plaintiffs TPI Holdings, Inc. and Dominion Enterprises (collectively "TPI") own a family of marks that use the TRADER-formative together with another word that refers to vehicles, including the marks AUTO TRADER, AERO TRADER, BOAT TRADER, CYCLE TRADER, OLD CAR TRADER, BIG TRUCK TRADER, and RV TRADER, among others (collectively the "TRADER Family of Marks" or "TRADER Marks"). For more than thirty

years, TPI has used this family of marks. It has also used a number of TRADER-formative marks that combine TRADER with terms suggestive of classified advertising, such as FREE ADS TRADER, BARGAIN TRADER, TRADER ONLINE, and TRADER PLUS. TPI has used its marks in connection with numerous publications offering classified advertising throughout the United States. Since 1996, TPI has also offered online classified advertising in connection with its marks at websites under TRADER-formative domain names, including autotrader.com, boattrader.com, cycletrader.com and bargaintrader.com. TPI owns over forty-five federal trademark registrations for its TRADER marks.

2. In approximately January 2009, Schellenberger adopted and began using the mark MX TRADER in connection with the operation of a website that enables third parties to offer their motocross motorcycles for sale. Schellenberger's website directly competes with TPI's cycletrader.com website. On December 16, 2010 TPI filed a complaint in the instant action claiming, *inter alia*, that Plaintiff's use of the domain name mxtrader.net and the mark MX TRADER infringe upon TPI's rights in its TRADER Family of Marks.

3. The Court has jurisdiction over the subject matter of this action and over Plaintiff and venue in this action is proper in this judicial district.

Accordingly, it is hereby ORDERED:

1. TPI's Motion for Default Judgment is GRANTED;
2. Judgment is entered in favor of TPI against Defendant as to each of the claims asserted by TPI against him;
3. Defendant and all his agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from Defendant, or in concert or participation with Defendant, and each of them, are PERMANENTLY ENJOINED and RESTRAINED, from:
 - (a) using the domain name mxtrader.net and the MX TRADER mark and any trademark, company name, or domain name that is confusingly similar to TPI's TRADER Marks;
 - (b) engaging in any other conduct which will cause, or is likely to cause, confusion, mistake, deception, or misunderstanding as to the affiliation, connection, association, origin, sponsorship, or approval of Defendants' online businesses or services with or by TPI; and
 - (c) otherwise infringing upon TPI's TRADER Marks or unfairly competing with TPI in any manner whatsoever.
4. The domain name mxtrader.net shall be transferred to Plaintiff Dominion Enterprises. The registrar for the domain name, ENOM, Inc., shall take

prompt steps to effectuate transfer of ownership of the domain name <www.mxtrader.net> to Dominion Enterprises in accordance with its instructions.

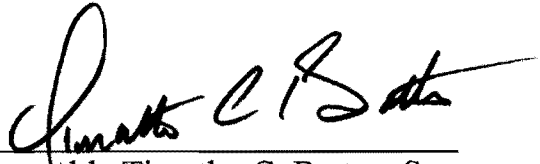
5. Defendant's registration for the mark MX TRADER, Registration No. 3,671,254 is cancelled. Pursuant to 15 U.S.C.A. § 1119, the Clerk is directed to notify the Director of the United States Patent and Trademark Office of this order of cancellation of Registration No. 3,671,254, who shall take the steps necessary enter the cancellation on the records of the Patent and Trademark Office.

6. Defendant shall deliver to Plaintiffs for destruction all advertising and promotional materials, labels, cartons, brochures, business stationary, calling cards, information sheets, posters, signs, and any and all other printed or graphic materials of any type, including the plates, molds, or other means of producing the materials, which bear references to confusingly similar imitations of TPI's TRADER Marks, or to the domain name mxtrader.net.

The Clerk is DIRECTED to enter judgment pursuant to RULE 58, Fed. R. Civ. P. and to place this matter among the terminated cases.

The Clerk is further DIRECTED to send a certified copy of this Judgment Order to defendant's registrar, ENOM, Inc., all counsel of record and the Director of the U.S. Patent and Trademark Office.

SO ORDERED this 4th day of May, 2011.

A handwritten signature in black ink, appearing to read "Timothy C. Batten, Sr.", written over a horizontal line.

Honorable Timothy C. Batten, Sr.
United States District Court Judge